

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS AT BOSTON

HEATHER KIERNAN,

Plaintiff,

-v-

CIVIL NO. 04-10131 RBC

ARMORED MOTOR SERVICE OF
AMERICA, INC., and
FRANCESCO CIAMBRIELLO

Defendants.

**PLAINTIFF HEATHER KIERNAN'S MOTION FOR SANCTIONS AND
OTHER RELIEF OR IN THE ALTERNATIVE,
MOTION FOR BIFURCATION AGAINST THE DEFENDANTS
ARMORED MOTOR SERVICE OF AMERICA INC.
AND FRANCESCO CIAMBRIELLO
FOR SPOILIATION OF EVIDENCE**

The Plaintiff, Heather Kiernan, by and through her counsel hereby moves for sanctions and other relief against the Defendants Armored Motor Service of America, Inc. (AMSA) and Francesco Ciambriello (Ciambriello) for spoliation of evidence on the grounds that the Defendants did not preserve, and/or may have been complicit in the destruction of essential relevant evidence tending to prove or disprove and factual issues raised by the pleadings.

In the alternative, pursuant to Fed.R.Civ.P. 42(b), the Plaintiff moves to bifurcate the issue of spoliation of evidence, and to have a separate factual trial on those issues. As grounds in support, the Plaintiff believes that she will be prejudiced if a jury were to consider the spoliation issues along with the claims and defenses.

A memorandum of law in support of this motion, along with exhibits, is filed herewith, and incorporated herein.

Certification pursuant to Local Rule 7.2(A)(2)

The undersigned hereby certifies that pursuant to Local Rule 7.1(A)(2), counsel for the parties conferred in an attempted in good faith to resolve and/or narrow the issues presented in the motion. The conference with AMSA's counsel occurred on Friday, February 3, 2006, and the conference with Ciambriello's counsel occurred on Thursday, February 9, 2006.

REQUEST FOR ORAL ARGUMENT

Plaintiff believes that oral argument may assist the court and wishes to be heard.

WHEREFORE, your Plaintiff respectfully requests that her motion be GRANTED and the either the Defendants be sanctioned, or alternatively, that the issue of spoliation be bifurcated, and that the Court enter any other relief deemed equitable, just and proper.

Respectfully submitted:
HEATHER KIERNAN

DATED: February 10, 2006

/s/ William J. McLeod
William J. McLeod, BBO 560572
McLEOD LAW OFFICES, PC
77 Franklin Street
Boston, MA 02110
617.542.2956/phone
617.695.2778/fax
wjmc@mcleodlawoffices.com

Certificate of service

In accordance with the rules of this Court, I hereby certify today, February 10, 2006, that I caused a true copy of this document with the Memorandum of Law In Support and all exhibits and attachments to be served on all parties listed below, who are participants in the Court's ECF program:

David Ardito, counsel for Ciambriello
Allison Romantz, counsel for AMSA

/s/ William J. McLeod
William J. McLeod